

***United States Court of Appeals  
for the Second Circuit***



**BRIEF FOR  
APPELLANT**





76-6068

IN THE  
UNITED STATES COURT OF APPEALS  
SECOND CIRCUIT

DOCKET NO. 76-6068

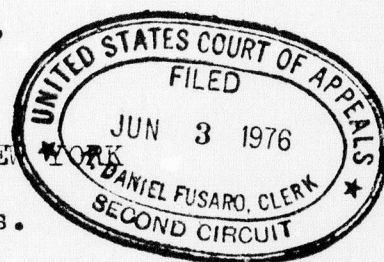
REV. DONALD L. JACKSON

Plaintiff - Appellant,

vs.

UNITED STATES OF AMERICA & STATE OF NEW YORK

Defendants - Appellees.



APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NEW YORK

BRIEF ON BEHALF OF PLAINTIFF - APPELLANT,

**BRIEF +  
APPENDIX**

REV. DONALD L. JACKSON  
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BUFFALO, NEW YORK 14205  
PHONE 716-855-2775

TO: Mr. Richard J. Arcara  
U. S. Attorney  
502 U. S. Courthouse  
Buffalo, New York 14202

Mr. Louis J. Lefkowitz  
New York State Attorney General  
The Capitol  
Albany, New York 12224

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QUESTION PRESENTED FOR REVIEW

Appeal from Judge Curtin's, decision granting Defendant late filing of an answer or responsive pleading, United States of America.

To also review the fact that State of New York failure to file a timely responsive.

HISTORY OF THE LAWSUIT:

This lawsuit was filed in United States District Court For The District of Columbia, That defendant State of New York, submitted the Court a Motion for enlargement of time to answer or to move against the complaint, which was granted to May 15, 1974, New York State failed to comply with the Order of the Court, and is in default. Defendant United States of America, Moved for change of Venue and Enlargement of Time. The Court granted both Motions, Enlargement of time was extended 60 days from the date of the Order which Order was dated May 24, 1974, and transferred the case to United States District Court for Western New York.

United States Government has not answered or moved against the complaint in this period of time.

STATEMENT OF THE CASE:

1. That Judge Curtin, erred in granting United States, additional time to answer or to move against the complaint, since United States, gave no reason, why it had not answered or moved against the complaint in the 60 days



granted by the Court. The same Court that granted Motion to change Venue, an Appeal was filed by Plaintiff, however Judge Robinson, strike the notice of appeal from the docket June 6, 1974, This Order is printed in the appendix.

Defendant United States, time to answer or to move against the Complaint would expire around July 24, 1974. Defendant gives no reason why the Court Order was not obeyed.

Bonanza International Inc, and Stewart Investment Inc. VS. Joseph Charles Corceller, Jr. 480 F. 2d 613 (CA-5) 1973:

"REFUSAL OF DEFENDANT TO OBEY COURT'S ORDERS CONSTITUTED SUFFICIENT GROUNDS FOR ENTRY OF A DEFAULT JUDGMENT AGAINST HIM."

Fedor vs Ribicoff 211 Fed, Supp. 520 (1962).

Rank vs, U. S. 142 F. Supp 1.

Henry VS. Snedders 490 F. 2d 315.

60 months has passed since United States, received its 60 days extension. 14 Days after time had expired for United States Government to Answer or to Move against the Complaint, August 6, 1974, United States Attorney appeared in these proceedings, and claimed United States had not been served these proceedings are listed in the Appeal Index as item 16, this resulted in Judge Curtin, not making any ruling which an appeal was filed. This Court must enter Default judgment against both defendants. United States has not denied owing Plaintiff wages or any of the other



allegations.

After Notice of Appeal was filed, the District Court entered an Order adjourning taking deposition. Since both defendants are in default, they have lost all rights to take deposition. New York State filed a Motion to dismiss, May 21, 1974, the Motion was argued March 1975, over two years have passed and no decision has been made by the District Court.

CONCLUSION:

That the Court has jurisdiction to enter Default Judgment against United States of America, for Petitioners wages and other relief. The Court should also consider New York State, also not obeying the Orders of the Court also. There are ample supply of facts in the folder to show Petitioner is entitled to Default Judgment.

May 28, 1976.

Respectfully submitted,

*Rev. Donald L. Jackson*

Rev. Donald L. Jackson

A P P E N D I X



I N D E X

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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REV. DONALD L. JACKSON

Plaintiff

vs.

O R D E R

UNITED STATES OF AMERICA AND  
STATE OF NEW YORK,

Civil Action No.  
74-439

Defendants.

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The defendant, State of New York, having moved for an enlargement of time in which to answer or move against the Plaintiff's complaint, it is hereby

ORDERED, that the time for the defendant, State of New York, to answer or move against the complaint be enlarged to MAY 15, 1974.

Dated:

May 1, 1974

/s/ AUBRY E. ROBINSON JR.  
U. S. J.

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

REV. DONALD L. JACKSON

Plaintiff

Civil Action  
No. 74-439

V

UNITED STATES OF AMERICA, et al.,

Defendants

---

O R D E R

Upon consideration of the motion of defendant United States of America to change venue and for enlargement of time, and it appearing to the Court that transfer to the Western District of New York would be for the convenience of the parties and witnesses, and serve the interest of justice, it is by the Court this 23rd day of May, 1974

ORDERED that this action be and the same hereby is transferred to the United States District Court for the Western District of New York, pursuant to 28 U.S.C. 1404 (a); and it is further

ORDERED that the time within which defendant United States of America must answer, move or otherwise plead be and it hereby is extended to and including sixty days from the date of this order.

/s/ AUBRY E. ROBINSON JR.  
United States District Judge



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

REV. DONALD L. JACKSON  
Plaintiff

Civil Action  
No. 74-439

vs.

UNITED STATES OF AMERICA, ET AL  
Defendants

O R D E R

It appearing to the Court that on May 29, 1974, the Clerk of Court improperly accepted a notice of appeal by the plaintiff, Rev. Donald L. Jackson, from this Court's May 24, 1974 order transferring this action to the United States District Court for the Western District of New York, pursuant to 28 USC 1404 (a), such order not being an appealable order; it is therefore

ORDERED that the Clerk of Court strike the notice of appeal from the docket.

/s/ AUBRY E. ROBINSON JR.  
United States District Judge

III

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

---

REV. DONALD L. JACKSON,

Plaintiff

-vs-

Civ-74-293

UNITED STATES OF AMERICA and  
STATE OF NEW YORK,

Defendants

---

The court will defer ruling on the motions to dismiss made by defendants United States of America and State of New York until after the completion of discovery. The court will also defer ruling on plaintiff's application for a jury trial for the present.

However, after considering the facts set forth in the affidavit of Theodore J. Burns, Assistant United States Attorney, of March 15, 1976, I grant his motion permitting the late filing of an answer or responsive pleading. The confusing history of this litigation set forth in his affidavit compels that relief. Any pleading or motion to be filed shall be filed within fifteen (15) days of this order.

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SO ordered.

/s/ JOHN T. CURTIN  
United States District Judge

DATED: April 5, 1976



UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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REV. DONALD L. JACKSON

-vs-

Civ-74-293

UNITED STATES OF AMERICA  
and STATE OF NEW YORK

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SIR: Take notice of an ORDER that Plt's  
deposition be & it hereby is adjourned to April  
27, 1976 etc.

duly granted in the above entitled action on the  
14th day of April, 1976, and duly entered in the  
office of the Clerk of the United States District  
Court, Western District of New York, on the  
14th day of April, 1976.

Dated: Buffalo, New York  
April 19, 1976

JOHN K. ADAMS, Clerk  
U.S. District Court  
U.S. Courthouse  
Buffalo, New York 14202

To Donald L. Jackson, Plaintiff

To Richard Arcara, Esq  
Louis J. Lefkowitz, Esq  
Attorney for Defendant

Federal Rules of Civil Procedure 77 (d)

Please file under  
Standing direction to the  
clerk

CERTIFICATE OF SERVICE JUN 2 1976

I certify that the signature or stamp of United States  
Attorney, and New York State Attorney General, verifies that  
someone from their office competent, has been served two copies  
of the Brief, Jackson vs. United States & State of New York,  
Docket No. 76-6068.

Copy attached

Dated June 1, 1976

Rev. Donald L. Jackson



*2 copies*  
Received *at* DEPARTMENT OF LAW  
65 Court Street  
Buffalo, N. Y. 14202

From *Donald Jackson*

on *June 1* 19*76*

at *9:50 A. M.*

*Walter T. Swan*  
Assistant Attorney General

*received US Atty's  
Office*

*6-1-76*

*R. Lerigak*

*2 copies*